

## ASSURANCE OF VOLUNTARY COMPLIANCE

In the matter of

Heritage Group, LLC dba Heritage Building Maintenance LLC,  
Heritage Microbial Control, LLC,  
SPMC LLC, and  
Joseph Johnson,

Respondents.

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The State of Iowa ex rel. Thomas J. Miller, Attorney General of Iowa (“Attorney General”) enters into this Assurance of Voluntary Compliance (“Assurance”) with Heritage Group, LLC dba Heritage Building Maintenance, LLC; Heritage Microbial Control, LLC; SPMC, LLC; and Joseph Johnson (each a “Respondent” and collectively “Respondents”) relating to Respondents’ representations in connection with the sale and advertisement of janitorial and cleaning services under the Iowa Consumer Fraud Act, Iowa Code Section 714.16 (“CFA”).

1. Thomas J. Miller is the duly elected Attorney General of Iowa. The Attorney General is expressly authorized pursuant to Iowa Code Section 714.16(7) to bring a civil action to enforce the CFA.
2. Respondent Heritage Group, LLC dba Heritage Building Maintenance, LLC is an Iowa limited liability company with its primary place of business at 5140 Park Avenue, Suite J, Des Moines, IA 50321.
3. Respondent Heritage Microbial Control, LLC is an Iowa limited liability company with its primary place of business at 5140 Park Avenue, Suite J, Des Moines, IA 50321.
4. Respondent SPMC, LLC is an Iowa limited liability company with its primary place of business at 5140 Park Avenue, Suite J, Des Moines, IA 50321.

5. Respondent Joseph Johnson is a resident of Iowa. He was a partial owner of Heritage Group. Mr. Johnson served as the President of Respondent Heritage Group, and the President and the Technical Director for Respondent SPMC, LLC.

### **BACKGROUND & ALLEGATIONS**

6. Respondents Heritage Group, LLC dba Heritage Building Maintenance, LLC and Heritage Microbial Control, LLC (collectively, “Heritage Respondents”) sell and provide cleaning and janitorial services to primarily commercial clients.
7. The Heritage Respondents also advertise and sell an antimicrobial service that consists of a “Test-Treat-Track” process (hereinafter “Test-Treat-Track Process”).
8. The Heritage Respondents have referred to the Test-Treat-Track Process variously as “Science-Proven Microbial Control”, the “Science-Proven Microbial control program” or as one component of the “Science-Proven Microbial Control program.”
9. Respondent SPMC, LLC was established in June 2020. SPMC, LLC advertises and licenses the Test-Treat-Track Process for use by other entities, including the Heritage Respondents. The Heritage Respondents are “certified partners” of SPMC, LLC.
10. SPMC, LLC’s “MicrobX™ program” uses the Test-Treat-Track Process. References herein to the Test-Treat-Track Process include the “MicrobX™ program.”
11. The Test-Treat-Track Process is described by Respondents as a three-step process for treating surfaces inside buildings that consists of: (1) conducting a “bio-burden analysis” on the surfaces using an adenosine triphosphate or “ATP” meter; (2) electrostatically applying a hospital-grade disinfectant to the surfaces and electrostatically applying an antimicrobial surface protectant to the surfaces;<sup>1</sup> and (3)

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<sup>1</sup> The antimicrobial surface protectants Respondents have used include SurfaceGuard90-BioProtect (EPA No. 87583-3) and ProShield 5000 (EPA No. 53053-28).

tracking the bio-burden levels after the application of the disinfectant and antimicrobial surface protectant through using an ATP meter.

12. The U.S. Environmental Protection Agency (“EPA”) has approved each antimicrobial surface protectant used in the second step of the Test-Treat-Track Process as a “microbiostatic agent...that inhibits the growth of odor causing bacteria and fungi (mold and mildew), bacteria and fungi (mold and mildew) which cause staining and discoloration, and algae. This product does not protect users or others against food-borne or disease-causing bacteria or fungi.” The EPA has approved the use of certain marketing statements/claims in connection with use of the antimicrobial surface protectants that are consistent with the agency’s approval.

13. The Attorney General alleges the Respondents violated the CFA by implicitly and explicitly misrepresenting that the Test-Treat-Track Process:

- a. provided long-lasting or residual efficacy to prevent or mitigate transmission of SARS-CoV-2 virus (the Coronavirus that causes COVID-19, hereafter “Coronavirus”);
- b. protected surfaces from Coronavirus for long periods of time, such as 30, 60 or 90 days; and/or
- c. kept surfaces free from Coronavirus for long periods of time, such as 30, 60 or 90 days.

14. The Attorney General further alleges that Respondents violated the CFA by implicitly and explicitly misrepresenting that the Test-Treat-Track Process provides long-term, persistent, or enduring protection against viruses generally and the transmission of infections generally.

15. The Attorney General alleges that Respondents lacked a reasonable basis for these claims, as required by Iowa Code section 714.16(2)(a), and these claims were misleading, deceptive, and constituted an unfair practice.
16. This Assurance is executed as a compromise resolution of claims being considered by the Consumer Protection Division of the Iowa Attorney General. Respondents expressly deny any liability or wrongdoing. Neither the payment of the below sum, nor any of the terms herein, constitute an admission of liability on the part of any person or entity.

### **RESOLUTION & TERMS**

17. Respondents, and their directors, officers, principals, partners, employees, agents, representatives, affiliates, successors, assigns and parent or controlling entities (“Respondents *et al.*”) and all other persons and entities acting in concert with Respondents and who have actual or constructive notice of this Assurance, agree as follows:
- a. Until and unless the EPA, FDA, or other state or federal regulatory agency approves a pesticide or chemical for a use or claim listed in (i) - (iii) below and Respondents *et. al.* use such pesticide or chemical in accordance with such approval, Respondents *et. al.* shall not state or imply in any manner or forum that the Test-Treat-Track Process:
    - i. has long-lasting or residual efficacy to prevent or mitigate transmission of any virus, including Coronavirus, or transmission of diseases;

- ii. protects surfaces from any virus, including Coronavirus, or transmission of diseases, for long periods of time, such as 30, 60 or 90 days; or
  - iii. keeps surfaces free from any virus, including Coronavirus, or transmission of diseases for long periods of time, such as 30, 60 or 90 days.
- b. In connection with the licensure, advertisement and sale of the Test-Treat-Track Process to consumers and licensees, Respondents shall clearly and unambiguously disclose that the antimicrobial surface protectant used in the Test-Treat-Track Process is not EPA-approved to prevent the transmission of any virus, including Coronavirus, or the transmission of disease. This disclosure shall appear in close proximity to the description of Test-Treat-Track Process; be included on any list of “Frequently Asked Questions” used in connection with such advertisement, sale, and/or licensure of the Test-Treat-Track Process; and be affirmatively provided to entities that seek to license the Test-Treat-Track Process.
- c. Respondents shall not directly or indirectly make any efficacy or safety claim regarding a pesticide or chemical, or application of a pesticide or chemical, unless and until such claim is approved by the EPA, FDA, or other state or federal regulatory agency.

18. The Attorney General acknowledges that pursuant to a Preliminary Assurance of Voluntary Compliance executed in November, 2020, the Heritage Respondents reasonably attempted to notify consumers who purchased Microbial Services, which

also is referred to herein as the Test-Treat-Track Process,<sup>2</sup> beginning on January 1, 2020.<sup>3</sup> The Attorney General further acknowledges that in conjunction with the Notice, those Respondents offered refunds to the notified consumers.

19. Respondents agree they shall continue to provide a full and unconditional refund for the costs of the Test-Treat-Track Process to any Iowa consumer, upon request by the consumer to Respondent, who purchased the Test-Treat-Track Process during the period between January 1, 2020 through the Effective Date. Consumer refund requests made pursuant to this Paragraph may be made at any time before or within two (2) years after the Effective Date.
20. Respondents affirm that all known affiliates, subsidiaries, and entities owned or operated by Respondents which offer materially similar services as those identified in this Assurance have been disclosed to the Attorney General and included as parties in this Assurance.
21. Respondents shall pay to the State of Iowa the sum of \$75,000.00 within ten (10) days of the Effective Date of this Assurance. Payment shall be made to the “Iowa Attorney General” and shall be by check or wire transfer. The Attorney General shall deposit that sum in the Consumer Education and Litigation Fund established by Iowa Code Section 714.16C for use in accordance with that statute.

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<sup>2</sup> In the Preliminary Assurance of Voluntary Compliance and correspondence required under that agreement, the Test-Treat-Track Process was referred to as “Microbial Services.” As stated in the Preliminary Assurance, the parties agreed that for purposes of the Preliminary Assurance, “Microbial Services” refers to any long-lasting protection service provided to Iowa consumers, such as the use of SurfaceGuard90- Bio Protect (EPA No. 87583-3) and ProShield 5000 (EPA No. 53053-28). The Attorney General took and takes no position as to the use of the word “microbial.” Heritage did not and does not agree the definition of the term “Microbial Services” as defined in the Preliminary Assurance of Voluntary Compliance is accurate or applicable outside of the Preliminary Assurance.

<sup>3</sup> The Attorney General relied on the representations of the Heritage Respondents that the consumers covered by the Preliminary Assurance of Voluntary Compliance were provided with notice as required under the Preliminary Assurance of Voluntary Compliance and were offered a refund.

22. Respondents are jointly and severally liable for the payment required under Paragraph 21.
23. Each Respondent understands and acknowledges that this settlement is binding as between it and the Consumer Protection Division of the Attorney General's office and is not binding upon other Iowa state agencies.
24. Respondents shall comply with all requests from the Attorney General relating to compliance with this Assurance within fourteen days of such request.
25. Any violation by Respondents *et al.* of any term or requirement of this Assurance, in addition to whatever other legal remedies may be available, shall constitute a violation of the CFA, and each such violation by one or more Respondents, if established by a preponderance of the evidence in an enforcement action by the Attorney General, gives rise to all of the remedies provided in the CFA.
26. If the Attorney General believes that Respondents failed to comply with any term of this Assurance, the Attorney General shall provide written notice to Respondents unless the failure to comply threatens the health or safety of the citizens of Iowa and/or creates an emergency requiring immediate action. Respondents shall have seven (7) days from receipt of such notice to provide a good faith written response, including either a statement that Respondents believes it is in full compliance with the relevant provision or a statement explaining how the violation occurred, how it has been addressed or when it will be addressed, and what Respondents will do to make sure the violation does not occur again. During the seven (7) day period, the Attorney General shall engage in good faith discussions with Respondents before taking any enforcement action(s) in an attempt to resolve the alleged non-compliance and

Respondents shall refrain from initiating any legal action against the State. Nothing herein shall be construed to exonerate any failure to comply with any provision of this Assurance after the date of its entry, or to prevent the Iowa Attorney General from initiating a proceeding for any remedies or sanctions available under the law for failure to comply, or to compromise the authority of a court to punish any violation of this Assurance or provide other remedies such as reimbursement to consumers that were harmed by the violation. Further, nothing in this paragraph shall be construed to limit the authority of the Iowa Attorney General in an action to protect the interests of Iowa.

27. Nothing contained in this Assurance shall be construed to waive any individual right of action by a consumer or a local, state, federal or other governmental entity.
28. Nothing herein diminishes the requirements, duties, obligations or power set forth in the CFA.
29. The Attorney General's execution of this Assurance constitutes a release by the Attorney General of Respondents Heritage Group, LLC and Heritage Microbial Control, LLC from the Preliminary Assurance of Voluntary Compliance dated November 9, 2020.
30. The Attorney General's execution of this Assurance constitutes a settlement and a release of the Respondents from any and all liability for conduct described above in Paragraphs 13 and 14 that (i) occurred prior to the Effective Date of this Assurance and (ii) would violate the CFA; provided, the Attorney General may seek to enforce violations of this Assurance.
31. The "Effective Date" of this Assurance is the date of the last signature below.



32. The undersigned who have authority to consent and sign on behalf of Respondents  
and the Attorney General hereby consent to the form and contents of this Assurance.

Date: 11/22/2021

  
Heritage Group, LLC

GREG TITEROVA, CEO  
By (print name & title)

Date: 11/22/2021

  
Heritage Microbial Control, LLC

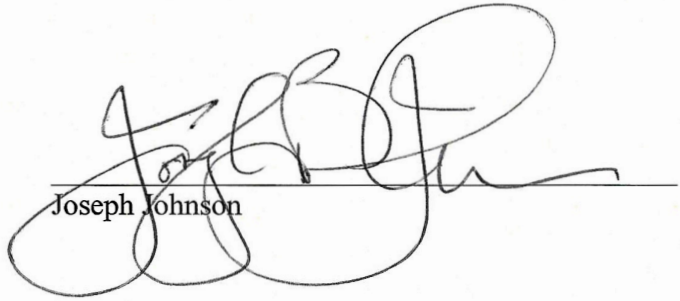
GREG TITEROVA, CEO  
By (print name & title)

Date: 11/22/2021

  
SPMC, LLC

GREG TITEROVA, CEO  
By (print name & title)

Date: 11/24/21

  
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Joseph Johnson

Date: \_\_\_\_\_

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Amy Licht, Assistant Attorney General

Date: \_\_\_\_\_

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Joseph Johnson

Date: 11-30-21

  
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Amy Licht, Assistant Attorney General